

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Competitive Product Prices
Global Reseller Expedited Package Contracts 1
(MC2010-21)
Negotiated Service Agreements

Docket No. CP2013-49

ORDER APPROVING AN ADDITIONAL GLOBAL RESELLER
EXPEDITED PACKAGE CONTRACTS 1 NEGOTIATED SERVICE AGREEMENT

(Issued February 26, 2013)

I. INTRODUCTION

The Postal Service seeks to include a Global Reseller Expedited Package (GREP) contract (Agreement) within the GREP Contracts 1 product.¹ For the reasons discussed below, the Commission approves the request.

¹ Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, February 8, 2013 (Notice). The Notice was filed pursuant to 39 C.F.R. § 3015.5.

II. BACKGROUND

Product history. The GREP Contracts 1 product encompasses Postal Service agreements with resellers who market Express Mail International (EMI) and Priority Mail International (PMI) to their customers at discounted prices. Notice at 4. The Commission added GREP Contracts 1 to the competitive product list by operation of Order No. 445, issued in Docket No. MC2010-21, following consideration of a Postal Service request based on Governors' Decision No. 10-1.² The Commission concurrently established the GREP contract filed in related Docket No. CP2010-36 as the baseline agreement for comparing potentially functionally equivalent agreements proposed for inclusion under the GREP Contracts 1 product (baseline agreement). *Id.* at 8.

This docket. In Order No. 1654, the Commission provided public notice of the Agreement, established a docket for consideration of the Agreement's consistency with applicable policies and regulations, appointed a Public Representative, and provided interested persons with an opportunity to comment.³

On February 14, 2013, the Commission requested additional information concerning the Agreement and the supporting financial information, including the termination date of the Agreement and other information filed under seal.⁴ The Postal Service responded to CHIR No. 1 on February 19, 2013.⁵

² See Docket Nos. MC2010-21 and CP2010-36, Order Concerning Global Reseller Expedited Package Contracts Negotiated Service Agreement, April 22, 2010 (Order No. 445).

³ Notice and Order Concerning an Additional Global Reseller Expedited Package Contracts 1 Negotiated Service Agreement, February 11, 2013 (Order No. 1654).

⁴ Chairman's Information Request No. 1 and Notice of Filing Under Seal, February 14, 2013 (CHIR No. 1).

⁵ Response of the United States Postal Service to Chairman's Information Request No. 1, February 19, 2013 (Response).

III. THE POSTAL SERVICE'S POSITION

The Postal Service asserts that its filing demonstrates that the Agreement complies with the requirements of 39 U.S.C. § 3633 and is functionally equivalent to the baseline agreement. Notice at 2-3. It states that it believes the Agreement fits within the language of Governors' Decision 10-1 and the Mail Classification Schedule language for the GREP Contracts 1 product. *Id.* at 3. The Postal Service explained the basis for this statement in greater detail in its Response. Response at 4-5.

The Postal Service asserts that the Agreement and the baseline agreement possess similar cost and market characteristics and similar functional terms. Notice at 4. The Postal Service describes the similarities and differences between the Agreement and the baseline agreement, but asserts that the differences do not alter "the fundamental service the Postal Service is offering or the fundamental structure of the contract." *Id.* at 7.

The Postal Service identifies numerous differences between the Agreement and the baseline agreement, but asserts that the differences do not affect the fundamental service that it is offering or the fundamental structure of the Agreement.⁶ *Id.* at 4-7.

IV. COMMENTS

The Public Representative filed comments on February 19, 2013.⁷ No other comments were received.

The Public Representative concludes, based on his review of the public and nonpublic materials submitted by the Postal Service, that the Agreement is functionally equivalent to the baseline agreement. PR Comments at 2. He also states that the Agreement comports with the requirements of 39 U.S.C. § 3633 and "seems to benefit the Postal Service." *Id.*

⁶ Differences include an additional "whereas" paragraph; the addition of the "®" and "™" symbols throughout; additional and revised definitions; revisions and additions to Articles 5-8; 11-14, 16; 18, 20-21; 23-25; and 27; and additional Articles 31 (solicitation of sales), 32 (intellectual property), 33 (effective date), 34 (limitation of liability), and 35 (warranties and representations). *See id.* at 5-7.

⁷ Public Representative Comments, February 19, 2013 (PR Comments).

V. COMMISSION ANALYSIS

Scope and nature of review. The Commission's responsibilities in this case are to ensure that the Agreement: (1) is functionally equivalent to the baseline agreement; and (2) satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules.

Functional equivalence. The Commission has reviewed the Postal Service's reasons for concluding that the Agreement shares similar cost and market characteristics with the baseline agreement, meets the pricing formula and classification established in Governors' Decision No. 10-1, and comports with 39 U.S.C. § 3633 and related Commission rules. It also has considered the Public Representative's views.

The Agreement differs from the baseline agreement in two potentially significant respects. First, it has an indefinite term, rather than a 1-year term.⁸ Second, its pricing structure is somewhat different than the pricing structure for the baseline agreement (although still within the parameters established by Governors' Decision 10-1).⁹ However, an agreement with an indefinite term and a pricing structure similar to the Agreement was included in the GREP Contracts 1 product in Docket No. CP2012-21.¹⁰ The Public Representative for Docket No. CP2012-21 said that the difference in pricing structure was a "more substantial" revision to the baseline agreement than the other revisions noted by the Postal Service in its filing, but concluded that this difference would not impact functional equivalency because the changed prices continued to meet

⁸ Compare Notice Attachment 1 at 7 with Docket Nos. MC2010-21 and CP2010-36, Request of the United States Postal Service to Add Global Reseller Expedited Package Contracts to the Competitive Products List, and Notice of Filing (Under Seal) of Contract and Enabling Governors' Decision, March 29, 2010, Attachment 3 at 5.

⁹ Compare Notice Attachment 1 at 6 with baseline agreement, Attachment 3 at 2 and Annex 1.

¹⁰ Docket No. CP2012-21, Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, April 27, 2012, Attachment 1 at 4 and 5; Order Approving an Additional Global Reseller Expedited Package Contract Negotiated Service Agreement, May 9, 2012 (Order No. 1337).

the standards established by Governors' Decision 10-1.¹¹ The indefinite term of that agreement was not addressed. The Commission added that agreement to the GREP Contracts 1 product. Order No. 1337 at 4.

In terms of differences from the baseline agreement, the indefinite term of the Agreement is somewhat problematic. However, given the limited number of GREP contracts and a pricing structure that satisfies section 3633(a), the Commission will not establish a new GREP contracts product, but instead will include the Agreement within the GREP Contracts 1 product.

Cost considerations. The Commission has reviewed the Notice, supporting financial analyses provided under seal, and the Public Representative's comments. Based on this review, the Commission finds that the Agreement should cover its attributable costs, as required by 39 U.S.C. § 3633(a)(2). It finds that the Agreement should not result in competitive products being subsidized by market dominant products as prohibited by 39 U.S.C. § 3633(a)(1). It also finds that the Agreement should have a positive effect on competitive products' contribution to institutional costs, consistent with 39 U.S.C. § 3633(a)(3). Accordingly, a preliminary review of the Agreement indicates that it is consistent with the provisions applicable to rates for competitive products. The Commission therefore finds that the Agreement is appropriately included within the GREP Contracts 1 product.

Other matters. The Agreement specifies that the Postal Service will notify the other party to the Agreement of the effective date of the Agreement. Notice Attachment 1 at 7. The Postal Service shall promptly notify the Commission of the effective date of the Agreement.

If either party terminates the Agreement in accordance with Article 11 of the Agreement, the Postal Service shall inform the Commission of this development. In addition, within 30 days of the termination of the Agreement, the Postal Service shall file

¹¹ Docket No. CP2012-21, Public Representative Comments, May 8, 2012, at 2.

costs, volumes, and revenues disaggregated by weight and country group associated with the contract, including any penalties paid.

The Commission notes that the financial model for the Agreement, which is proposed to be included in the GREP Contracts 1 product, includes references to Global Expedited Package Service (GEPS) contracts in the narrative and in spreadsheet tabs. To avoid unnecessary confusion between GREP and GEPS financial models, the Postal Service's GREP contracts should be accompanied by a financial model clearly indicating that the Postal Service has used GREP methodology.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Agreement filed in Docket No. CP2013-49 is included within the Global Reseller Expedited Package Contracts 1 (MC2010-21) product.
2. The Postal Service shall promptly notify the Commission of the effective date of the Agreement.
3. The Postal Service shall notify the Commission if either party terminates the Agreement in accordance with the terms of the Agreement.
4. Within 30 days of the termination of the Agreement, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with the contract, including any penalties paid.

By the Commission.

Shoshana M. Grove
Secretary